

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MARY C. DELORENZO,</p> <p>v.</p> <p>Respondent:</p> <p>CONEJOS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 62632</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 4, 2014, Diane M. DeVries and MaryKay Kelley presiding. Petitioner appeared *pro se*. Respondent was represented by Stephane Walter Atencio, Esq. Petitioner is protesting the 2013 classification of the subject property.

Subject property is described as follows:

**106 Pine Hill Road, Antonito, Colorado
Conejos County Schedule No. 59833030006**

The subject is a 1,406 square foot log house with a living room, kitchen, two bedrooms, two bathrooms, and a two-car garage. It was built in 2001 on 1.75 acre in the Conejos Park Subdivision.

Respondent assigned commercial classification for tax year 2013. Petitioner is requesting residential classification.

Ms. DeLorenzo described her two homes. Her primary residence was in Alamosa and her second home in Antonito, which was built as a second home until retirement, at which time she will occupy it permanently. She and her husband, extended family, and friends enjoyed occasional visits. In 2011, in order to offset expenses, she began advertising it for vacation rental and created a legal entity through which she paid sales and lodging taxes. She argued that it met the statutory definition of a residential improvement per Section 39-1-102(14.3), C.R.S., that defines a “residential improvement” as a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families.”

Ms. DeLorenzo queried multiple county assessors regarding classification of residential properties offering short-term rental. While Saguache County agreed with commercial classification and some failed to reply, the following counties defended residential classification: Summit, Ouray, Rio Grande, Routt, San Miguel, Pitkin, Clear Creek, Alamosa, and Albert. Their replies were as follows; properties retain residential classification if rented for short-term use; internet advertising is common; other fees and taxes may be applicable, including personal property tax.

Respondent's witness, Naomi Martinez-Keys, Conejos County Assessor, based commercial classification on several factors: payment of sales and lodging taxes; internet advertising; vacation rentals of thirty days or less, which she considered short term and, therefore, commercial; and designation of the subject as a "cabin", which falls under the ARL commercial subclass of "lodging".

Ms. Martinez-Keys equated the subject's short-term rental with commercial use; it was her impetus for re-classification. Her source was the Department of Revenue, which determined thirty days or fewer as "temporary" lodging and thirty-one days or more as "long-term" use.

Ms. Martinez-Keys defined the subject property as a "cabin" under the subsection "lodging" in the Assessor's Reference Library, Volume 2, at Page 6.30: "The land, structures, and improvements which typically provide temporary overnight lodging or sleeping facilities" A lodge "includes, but is not limited to, the following types of businesses: bed and breakfast, cabins, hotels, inns, motels, overnight campgrounds, and YMCA/YWCA." Ms. Martinez-Keys argued that the subject property competed with lodging facilities in the county.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2013.

The Board is persuaded that the subject property is a residential improvement as defined by Section 39-1-102(14.3), C.R.S.: "Residential improvements mean a building, or that portion of a building, designed for use **predominantly** as a place of residency by a person, a family, or families." (*Emphasis added*). "Designed for use" in this context contemplates that a structure is "devoted" to or "intended" for a particular use at the time its status is under review. *Mission Viejo v. Douglas Cty. Bd. of Equal.*, 881 P.2d 462, at 464 (Colo. App. 1994). Moreover, "use" in the statute refers to "place of residence," *i.g.*, a place where people live, thus contemplating actual use. *Id.* And, the term "predominantly," means "mostly," likewise refers to "use." *Id.*

The Board finds that the subject property was designed for use predominantly as a residence and the subject's use has been **predominantly** residential.

Neither statute nor the ARL requires owner occupancy. Neither prohibits either short-term or long-term leases; there is no reference to a time factor (more or fewer than thirty days) that determines classification. Neither statute nor the ARL prohibits advertising.

The Board finds that the subject property does not meet the definition of a commercial property per the ARL, Volume 2, Page 6.27: "Commercial property includes all lands, improvements, and personal property used as a commercial enterprise." The subject does not fall

under the examples of commercial enterprise (hotel/motel, cabin, inn, campground or bed and breakfast).

The Board is not convinced that the subject property meets the definition of a “lodge” per ARL, Volume 2, Page 6.30. It does not “*provide temporary overnight lodging or sleeping facilities*” in the same manner as a bed and breakfast, cabin, hotel, motel, inn, overnight campgrounds, or YMCA/YWCA. It is the Board’s opinion that these examples are large-scale commercial endeavors serving multiple guests and requiring one or more of the following services; management, desk staff, cleaning and maintenance, bookkeeping, and food. The subject property provides short-term vacation stays but does not compare to the lodging described in the ARL definition, which likely includes the following: 24-hour staff; multiple rooms; meals; check-in, check-out; daily cleaning staff; and supervision, among others example.

The Board has no knowledge of a relationship between the Department of Revenue and the assessor. The Department of Revenue’s parameter of thirty days has neither relevance nor application to classification. Also, while the term “thirty days or longer” can be found in the ARL, it refers to hotel and motel mixed-use properties and has neither relevance nor application to the subject.

Respondent’s request to classify this appeal as state-wide concern is denied.

ORDER:

Respondent is ordered to change the 2013 actual classification of the subject property to residential.

The Conejos County Assessor is directed to change their records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the

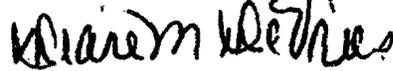
Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

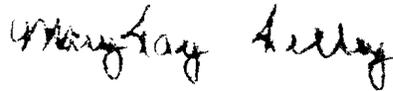
Section 39-8-108(2), C.R.S.

DATED and MAILED this 27th day of March, 2014.

BOARD OF ASSESSMENT APPEALS

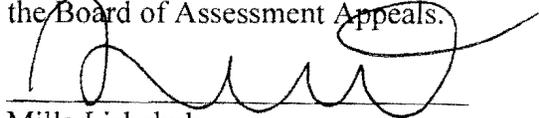


Diane M. DeVries



MaryKay Kelley

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Lishchuk

